

**Remarks :**

10           Applicant thanks the Examiner for his thorough case examination and submits the following amendment for allowance.

**Election/ Restriction**

15           Examiner withdrew claims 16, 18-22, 24-34 and 36 as being directed to a non-elected invention. Claims 16-25, 29 and 33 have been amended to read upon elected invention 1 which includes excavating using a vacuum method.

          Claims 16-25, 29 and 33 are now believed to be allowable. Claims 34-36 are withdrawn.

**Claim Rejections – 35 USC 112**

20           Examiner rejected claims 17, 23 and 35 under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 16-33 have been amended to clarify and particularly point out the subject matter which applicant regards as the invention. Claims 16-33 are now believed to be in allowable condition. Claims 34-36 are withdrawn.

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**Claim Rejections – 35 USC 102**

30           Examiner rejected claims 17 and 35 under 35 USC 102(b) as being anticipated by Gilman 6,470,605. Gilman discloses a vacuum tank used to receive the liquid and solids generated by his reduction system. The reduction system is his invention. The reduction system is an arrangement of water spray nozzles located within the suction end of his vacuum hose. Gilman's vacuum tank is

5 mounted horizontally, must be lifted to a tilt position for emptying, has a  
mechanical screw to secure the vacuum tank access door and has a filter 106  
remotely mounted in a horizontal position. Item 118 is described as a baffle to  
dissipate energy and direct the flow of air. Gilman has located a water tank far  
from the vacuum tank. Gilman's water tank is located near the trailer hitch thus  
10 creating a heavy weight on the towing vehicle. In his arrangement the trailers  
center of gravity moves drastically depending on which tank is empty or full.

Gilman fails to teach a compact arrangement of the vacuum tank mounted  
at an inclined slope above a water storage tank. Gilman fails to teach a vacuum air  
filter housing mounted adjacent to a vacuum container so as to use a single door  
15 to access both the vacuum tank and the filter housing. Gilman fails to teach a  
powered linear actuator or hydraulic cylinder disposed within the vacuum  
container to open or close said door. Nor does Gilman teach a compact  
arrangement of the vacuum tank mounted at an inclined slope above a water  
storage tank mounted on a mobile vehicle.

20 It is obvious that Gilman did not anticipate an inclined fixed slope vacuum  
container mounted over a water tank, nor a air filter housing with a common door  
with the vacuum container, otherwise he would have used the improvements and  
not gone to the trouble of separating the water container from the vacuum  
container and the vacuum container from the air filter. Nor would he have gone to  
25 the expense & trouble of building a hydraulic lift system just to dump the contents  
of the vacuum container. And who wants to stand in front of a door, and unscrew  
a latch to open it, knowing that the muddy contents are going to dump on your leg

& feet. He would not have used his design if the had anticipated the current invention.

Claims 16-33 are believed to be allowable in view of Gilman. Claims 34-36 are withdrawn.

## Claim Rejections – 35 USC 103

Examiner rejected claim 23 under 35U.S.C. 103(a) as being unpatentable in view of Pobihuschcy 5,408,766. Examiner states that Pobihuschcy shows the steps of having a means to open or close, said vacuum debris container access door but does not show using a telescoping means disposed within said vacuum container but that Pobihuschcy shows a similar vacuum method for excavating having a door 20 in the debris container 12 that is hydraulically opened ( col.2, line55+). Examiner states that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify, as taught by Pobihuschcy, to include a hydraulically operated to provide power means to operably open and close the door without manual strength required.

As shown in Fig 3 and 4, Pobihuschey teaches a horizontally mounted vacuum holding tank<sup>13</sup> that does not incline and further requires an auger<sup>16</sup> to remove the contents of the vacuum holding tank<sup>13</sup>. The auger<sup>16</sup> as shown in Fig 3 is located just inside access door 20. The auger<sup>16</sup> would chew up any door opening cylinder places within the vacuum tank<sup>13</sup>.

Pobihuschy does not teach, nor was it obvious to Podihuschy to consider a vacuum container being mounted at an inclined slope sufficient to allow solids

5 and liquids to empty from said vacuum container by gravity and to provide space  
for said liquid storage container to be mounted below said incline of said vacuum  
container. Nor does he teach having a means of mounting a filter housing adjacent  
to said vacuum container so as to allow a single door access to both said filter  
housing and said vacuum container. Nor does he teach a vacuum debris container  
10 access door using a telescoping means disposed within said vacuum debris  
container, said telescoping means being one or more devices selected from the  
group consisting of a hydraulic cylinder, air cylinder and a linear actuator.

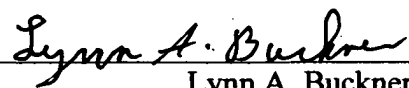
Podihuschcy would not have gone to all the design trouble, equipment cost  
and maintenance cost & trouble to maintain an auger if a inclined fixed slope  
15 vacuum container that empties itself by gravity had been obvious to him.

Claims 16-33 are believed to be allowable in view of Podihuschcy. Claims  
34-36 are withdrawn.

20 "A claim is anticipated [under 35 USC 102 (b)] only if each and every  
element as set forth in the claim is found, either expressly or inherently described,  
in a single prior art reference." Verdegaal Bros. vs. Union Oil Co. of California, 2  
U.S.P.Q. 2d1051, 1053 (Fed. Cir. 1987), (emphasis added). See M.P.E.P. 2131.

It is believe that claims 16-33 are in a condition of allowance.

Respectfully submitted,



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